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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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IN THE MATTER OF THE COMMISSION'S) INQUIRY INTO RETAIL ELECTRIC) COMPETITION)

Docket No. E-00000W-13-0135
COMMENTS OF THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR'S ASSC'N

On May 23, 2013, the Executive Director of the Arizona Corporation Commission (ACC) invited comments on retail electric competition in Arizona, particularly in response to 18 posed questions.

AZISA Background:

The Arizona Independent Scheduling Administrator's Association (AZISA) is a non-profit Arizona Corporation formed in September 1998 to act as an independent electric transmission scheduling administrator. The AZISA is designed to "support the provision of comparable, non-discriminatory retail access to the Arizona transmission system to facilitate a robust and efficient competitive electric market in Arizona." *(Excerpt from: Arizona Ind. Scheduling Administrator Assoc. FERC Electric Tariff, Original Volume No. I1, Section 1, Superseding Substitute Sheet No. 4, effective December 15, 2001).* Arizona Administrative Code, Title 14, Ch.2, Article 16, Retail Electric Competition, R14-2-1609 (A) requires the "Affected Utilities" to provide "nondiscriminatory open access to transmission and distribution facilities to serve all customers. No preferences will be given to the monopoly utility's existing customers or one who chooses to be served by an Energy Service Provider (ESP). Use of the system is allocated on a pro-rata basis." This section A of the Rules is in place today and the AZISA is one possibility of ensuring this occurs.

The AZISA's purpose was also reaffirmed in a 2006 Decision of the ACC, and continues to be, while retail competition is under consideration. In said Decision, the ACC stated that the AZISA "provides the important benefit of keeping the possibility of retail access available to Arizona consumers at minimal cost, by providing potential competitors with the necessary assurance that they will have fair and equitable access to transmission until an RTO is formed and approved by FERC to take over that function." ACC Decision No. 68485 (February 23, 2006 at [15]). The Decision further directed ACC Staff to conduct a review of the issues regarding the AZISA and recommend whether the ACC should continue to support the AZISA as a matter of public policy. It was determined that the AZISA would enforce rules designed to promote fair and open access to retail electric markets in Arizona.

As referenced, the AZISA has an approved FERC tariff on file and a detailed Protocols Manual (Protocols or PM) governing the performance of its functions. The Protocols were developed by an ACC-sanctioned "Electric Competition Advisory Group," which included ACC staff, utilities, and other interested market participants, during an 18-month process. The procedures in the first of two Phases set forth in the AZISA Protocols, as described in detail below, were tested in actual operating experience when competition was active in Arizona in 2000-2001. The AZISA has an active Board comprised of a diverse group of stakeholders and meets regularly to keep abreast of market developments, and to manage the ongoing business of AZISA, as provided for in the organization's Bylaws. There are five market segments represented on the AZISA Board, and the member stakeholder process promotes free and open information, with website publication of minutes, and ACC Staff participation.

The AZISA is filing comments primarily in response to the questions that directly relate to the AZISA's objectives specifically, questions 5, 6, 8, 10, 13 and 18. These questions are very broad in their inquiry, but the functions of the AZISA are responsive to a portion of each of these questions. To summarize the AZISA's role, the AZISA:

- Is an independent electric transmission scheduling administrator;
- Exists to facilitate open, non-discriminatory transmission access and to implement retail electric competition, with real-time dispute resolution;
- Oversaw the successful scheduling and delivery of power in 2000-2001 to a small number of retail customers (predominantly in the APS service area) under Phase 1 of its Protocols, the ACC's electric retail competition rules (R14-2-1609 (A) and FERC-approved utilities' OATT Tariffs; and,
- Is ready to ramp up its efforts to perform its functions, including updating its Protocols to allocate transmission fairly and reflect current Western Electric Coordinating Council (WECC) practices for scheduling, delivering and settling power.

AZISA Answers to Specific Questions:

"6) What, if any, features, entities or mechanisms must be in place in order for there to be an effective and efficient market structure for retail electric competition? How long would it take to implement these features, entities or mechanisms?"

The AZISA Protocols provide a means for ensuring nondiscriminatory access to the Arizona transmission system to facilitate a robust and efficient competitive electric market. With some fine tuning to deal with FERC electric policy evolution over the last decade, as discussed below, the Protocols can be used to implement retail competition in the near term.

With respect to functions or activities to be performed by the AZISA under the Protocols, implementation has been phased. Phase 1 (effective since FERC approved the AZISA amended tariff filing in 2001) consists of the provision of dispute resolution services and limited oversight. Phase 2 (effective after competitive load in Arizona exceeds 300 MW and the AZISA Board approves a business plan covering all AZISA activities, including monthly Allocated Retail Network Transmission (ARNT) auction mechanism, Must Run Generation Procedures and an energy imbalance trading mechanism) will transition from limited oversight to more active administration, including monitoring compliance with FERC-recognized standards of conduct related to transmission access and the allocation of transmission where the paths are congested.

In recent Board meetings, AZISA members have generally agreed that the AZISA can incorporate present WECC practices and requirements regarding scheduling and delivery of retail competitors' power and that the AZISA must focus on the transmission allocation Section V. of the Protocols to modify, if necessary, and implement ARNT. (Copies of minutes are posted on the AZISA website, www.az-isa.org). When presented with the AZISA Protocols for approval, FERC declined to rule on the Phase 2 Protocols in view of their then uncertain effective implementation date. Instead, FERC instructed that the AZISA submit an additional filing for its consideration sixty days before planned Phase 2 Protocols implementation. *See, Arizona Independent Scheduling Administrator Association*, 93 FERC ¶61,231 at 61760 (2000). FERC approval is required for any changes to the AZISA's Phase 1 Protocols and, as noted, the Phase 2 Protocols necessary to facilitate competitive load beyond 300 MW.

Federal regulatory changes in the last decade since the Protocols were originally developed and approved by the FERC include implementation of FERC Orders Nos. 888, 889, 890 and 1000, all which have markedly enhanced transmission open access nationwide. These events require updates to the Protocols. Phase 2 may include annual and monthly allocation auctions and the trading of transmission rights, which will require software and updating to best practices methods that are already in existence today. As originally envisioned, each transmission path would have an auction market-clearing price and each Scheduling Coordinator would then get credit for a pro-rata share of the revenue. The transmission provider/Affected Utilities that are still members of the AZISA include Arizona Public Service (APS), Tucson Electric Power (TEP) and Unisource. The Arizona Legislature passed the Electric Power Competition Act and it became law on May 29, 1998. Consistent statewide application of rules, procedures and orders are required. Therefore, SRP and the cooperatives can rejoin the AZISA to comply with State law.

Retail competitive transactions could take place immediately, for the first 300 MW of retail competitive service under Phase 1 of the existing FERC approved Tariffs and Protocols.[1] Copies of the Tariffs and the Protocols can be found at www.az-isa.org.

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[1] 4.3.4.1 of Protocols state that 300MW are provided for in Phase 1 which amount represents the MWs assigned to APS, of 200 MW and TEP of 80 MW. The other 20MW

Protocols for Phase 1 are ready and scheduling by competitive retail providers can proceed when they receive the necessary certification from the ACC.

"5) How can the Commission guarantee that there would be no market structure abuses and/or market manipulation in the transition to and implementation of retail electric competition?"

The AZISA is answering question 5 after question 6 because a description of the AZISA's role is set forth in question 6 above and provides context for this answer. As stated, the AZISA not only provides the efficient and fair allocation of transmission to implement retail competition, but upon Phase 2 Protocols Implementation, will also be a part of the remedy for market structure abuses. The AZISA, by virtue of its role in monitoring compliance with FERC recognized standards of conduct related to transmission access and the operation of the Interconnected Transmission System, helps to prevents market manipulation, at least in so far as fair access to the transmission system is concerned. *See,* Protocols Manual, Article 1, Section 3, that states, "Upon implementation of the ARNT auction and energy imbalance trading mechanisms (both designated as Phase II functions or activities), the Az ISA will monitor conditions indicating market anomalies or market inefficiencies and take action to remedy such conditions should they arise."

"8) What are the costs of the transition to retail electric competition, how should those costs be quantified, and who should bear them?"

First, who should bear the costs: Assuming the benefits of the AZISA's oversight services, for example, flow to retail consumers, they ultimately will also bear such costs, at least indirectly. The AZISA will ensure that all wholesale or future retail ESPs have access and pay a fair amount. There will not be cost shifting to any class, or to those customers who stay with the utility, versus those that switch to a competitor. The users of the transmission system, be it the incumbent utility or a third party transmitting at wholesale, or an ESP, currently pay for use of the transmission system under FERC-approved rate schedules. The users of the distribution system pay unbundled rates to compensate for its use under State law. Ultimately the end-use retail consumer, no matter who its electricity provider, pays for transmission service because all entities using the transmission lines, pay for that use, then either include such costs in their delivered price to the consumer, or, in the case of the utilities, pass it through its ACC-reviewed and approved rates.

The Board has secured a preliminary analysis of the costs associated with ramping up the AZISA to perform its functions in a report from Utilities Systems Efficiencies

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are partly for AEPCO, however AEPCO would need to rejoin the AZISA to facilitate access over its system. SRP originally had 200 MW allocated under consistent rules according to the previously cited State law.

(U.S.E.), authored by Cary Deise. The assumptions that underlay the cost estimate for a streamlined AZISA include: 6 full time equivalents (FTEs), fully loaded at $150,000 each, related office space, leased systems and out-sourcing of functions, like system settlements, to entities like the California Independent System Operator (CAISO) or the Southwest Power Pool. The cost estimate for a streamlined AZISA is calculated at $1 million/year in labor, $10,000 startup capital and $500,000 in added operations costs. In order to scale the AZISA to implement the more complex ARNT system and to own its settlement systems, the cost estimates rise to include 73 FTEs with labor costs at $11 million/year, $3.9 million start-up capital, and $5.2 million/year in added operations costs. More detailed scoping of the IT systems needed, staffing levels and their respective costs, will be required as the AZISA develops new Phase 2 protocols.

The AZISA implementation/management costs are designed under the Protocols to be recovered from all customers via the transmission providers' (TP) transmission and distribution charges, so that the TPs are kept whole. These cost estimates and additional refinement of them should be considered by the ACC and weighed against the demonstration of any benefits that will result from the resumption of retail choice, as will most likely be described by other parties to this proceeding.

"10) What are the issues relating to balancing area authorities, transmission planning, and control areas which must be addressed as part of a transition to retail electric competition?"

Ultimately, the scheduling and delivery of power in a competitive retail market should be performed the same as any other energy transaction. The Scheduling Coordinator will schedule to the customer's Balancing Authority (BA) at interconnection schedule points. The BA will deliver power and energy to the end use customer and charge for FERC tariff transmission and ACC distribution rates, plus appropriate Ancillary Services. When and if retail competition resumes, where the power comes from may change, and scheduled paths for delivery of power may change, but in general, service to retail customers will continue in much the same manner as it is today in that the multiple control area operators that exist in Arizona will balance the system and the issue will become more focused on the cost and the accounting for the energy imbalances. If transmission paths are congested, there are mechanisms for settlement to ensure that the utilities' existing customers are not harmed by cost shifting, as required under their FERC OATT, and Protocols of the AZISA. The AZISA or successor RTO, will improve on the inefficiencies that exist with the multiple balancing authorities and control areas in the state, but there may be greater opportunities for savings, too, with fewer BAs.

For example, the recent energy imbalance market (EIM) discussions between PacifiCorp and CAISO are being pursued by those entities due to the substantial savings and efficiencies that the EIM is expected to bring to each. In an April 23, 2013 letter from the PUC Energy Imbalance (EIM) Group to the CAISO, the group stated that it was "Heartened that the ISO has described the implementation of the CAISO/PacifiCorp MOU as a "scalable approach" to the EIM that can accommodate other balancing authorities (BAs) who see the economic merit of joining such a market." http://www.westgov.org/PUCeim/documents/04-23-13EIMtk-CAISO.pdf. PacifiCorp's/CAISO's EIM proposal allows for a broader geographic range of generation resources to contribute to the economic balancing of generation and load. Thus, the EIM is intended to provide better generation load balancing through an expanded footprint. This is just one example of the potential to secure energy savings if there were more coordination statewide and may have the potential to lower the costs of settling energy transactions in real time.

"13) Is retail electric competition viable in Arizona in light of the Court of Appeals' decision in Phelps Dodge Corp. v. Ariz. Elec. Power Coop., 207 Ariz. 95, 83 P.3d 573 (App. 2004)? Are there other legal impediments to the transition to and/or implementation of retail electric competition?"

As noted in the attached AZISA Response to several ACC Dockets in 2005 and the FERC legal opinion attached thereto, the Court of Appeals' finding regarding the Rules, while invalidating any requirement to compel utilities to participate in the AZISA or an RTO, has no impact on the legal status of the AZISA nor on the continued economic viability of the organization, nor do they lessen in any way the continued public benefits associated with the functions the AZISA performs to support competition. TEP and APS have also entered into AZISA-TP Agreements that are included as part of the FERC-approved Tariff, as noted on page 4 of the attached Response.

"18) How will retail electric competition affect public power utilities, cooperatives and federal controlled transmission systems?"

At least for Salt River Project and the cooperatives, under the law applying the equivalent of the ACC Competition Rules on public power, as mentioned above, SRP and AEPCO have, in the past, been members of the AZISA, and could join again to ensure the fair use of their transmission and distribution systems.

Conclusion:

In conclusion, the AZISA has and is intended to perform critical functions to support the delivery of power over the interconnected transmission and distribution systems in Arizona to retail consumers, consistent with open access requirements. The AZISA is ready to ramp up its efforts to perform its functions, including updating its Protocols to allocate transmission fairly and reflect current WECC practices for scheduling, delivering and settling power.

RESPECTULLY SUBMITED this 15th day of July 2013.

Vicki Sandler

Vicki Sandler
Executive Director, AZISA

Original and 13 copies filed this
15th day of July 2013, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
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Copies sent via electronic mail to the service list.
Referenced Response is attached hereto.

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Background

In its Supplemental Filing, AEPCO requests that the Arizona Corporation Commission ("ACC") take official notice of the Arizona Court of Appeals' January 25, 2005 mandate issued in *Phelps Dodge Corporation, et al., v. AEPCO, et al.*, 207 Ariz. 95, 83 P.3d 573 (2004). Further, AEPCO states that one of the issues involved in this appeal was whether the ACC had authority to promulgate certain portions of the Electric Competition Rules ("Rules"), specifically, subsections (C) - (J) of R14-2-1609, Transmission and Distribution Access which directed utilities subject to the ACC's jurisdiction to form an independent scheduling administrator with specified characteristics and to seek approval from the Federal Energy Regulatory Commission ("FERC") for the operation of such an entity. The Court of Appeals held that the ACC lacked authority to promulgate these Rules and such Rules were therefore invalid. Based on that finding, AEPCO urges the ACC to find that this proceeding, with respect to the issues raised in Docket No. E-00000A-01-0630 regarding the continuation of the Az ISA and whether the subject utilities had complied with their responsibilities associated with the Az ISA, "is now moot."

By Order issued February 18, 2005, Administrative Law Judge Wolfe requested that all interested parties submit responses to this filing by March 11, 2005.

Az ISA Response

Az ISA does not agree that the issuance of a Court of Appeals decision finding that a portion of the Rules are invalid renders the issues raised in Docket

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No. E-00000A-01-0630 moot. The implication of AEPCO's assertion is that such invalidation somehow affects the legal status of the Az ISA. However, Az ISA respectfully submits that the Court of Appeals' decision has no affect whatsoever upon the legal status of the Az ISA as a FERC-regulated entity operating exclusively under a FERC-approved tariff.

Indeed, at the time the FERC first approved the Az ISA tariff, FERC was aware that there was ongoing litigation before the Arizona courts concerning the validity of portions of these Rules. However, FERC specifically found that the Az ISA had an independent right to seek FERC approval of its tariff, <u>regardless of the continued validity of the Rules.</u>[1] Therefore, contrary to the implication of the AEPCO filing, a Court of Appeals' finding regarding the Rules has no impact on the legal status of the Az ISA and the issues raised in Docket No. E-0000A-01-0630 remain extant.

Further, the Court of Appeals' finding has no impact on either the continued economic viability of the organization or lessen in any way, in our organization's opinion, the continued public benefits associated with maintaining strong ACC support of the Az ISA. In the year 2000, when the Az ISA was first authorized by FERC, the expectation was that a regional transmission organization ("RTO") would soon be operating in the Southwest and that this RTO would thereafter assume the Az ISA's role in monitoring and facilitating retail electric competition in the state through the administration of the Az ISA's Protocols Manual ("PM"). However, this transition to an RTO has not yet occurred.

[1] At the request of the Az ISA's Executive Director, Az ISA's FERC counsel rendered a legal opinion on this precise issue, a copy of which is appended hereto and incorporated by reference herein.

The obligations of the states' two largest regulated utilities, Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP"), to continue to support the Az ISA, to comply with the PM, and to fund the activities of this organization, are not affected by the Court of Appeals' invalidation of a portion of the Rules. Indeed, APS and TEP representatives were working closely with other interested stakeholders and the ACC staff to develop the PM and the framework for the organization that eventually became the Az ISA well before any such Rules were ever promulgated by the ACC. In addition, in 1999, APS and TEP entered into settlement agreements approved by the ACC which each contain commitments by the respective utilities to support the Az ISA. The continued effectiveness of these settlement commitments is not affected by the invalidation of a portion of the Rules.

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That both APS and TEP have a legal obligation to support the Az ISA regardless of the continued effectiveness of the Rules is also important from a funding perspective. These two utilities currently provide 90% of the annual funding for this organization, which by its Board's instructions, is operating in a significantly streamlined mode to mirror the continued low level of retail electric market activity in the state.[2]

In addition to the legal obligations associated with these settlement agreements, both APS and TEP have entered into Az ISA - TP Agreements which are included as part of the Az ISA Tariff.[3] Section 3.02 thereof obligates APS

[2] The balance of the funding is currently provided by AEPCO and UNS Electric, Inc. (formerly Citizens Utilities).

[3] These agreements are designated as Original Service Agreement Nos. 1 and 3, Arizona Independent Scheduling Administrator Assoc., FERC Electric Tariff, Original Volume 1, and

and TEP each to "perform all obligations and responsibilities assigned to it pursuant to the [Az ISA] Bylaws, the PM[4] and this Agreement, including, without limitation, the obligation to make any payments when due." Finally, both APS and TEP have incorporated the PM as part of their Open Access Transmission Tariffs ("OATTs") on file with the FERC[5] and pursuant to Section 7 of their respective Az ISA - TP Agreements, are obligated to revise their OATT to reflect any changes to the PM that may be approved by the Az ISA Board and accepted by the FERC.

Respectfully submitted,

Patrick J. Sanderson
Acting Executive Director

Arizona Independent Scheduling
Administrator Association

Dated: March 11, 2005

Attachment

were accepted by the FERC by letter order issued July 10, 2001 in Docket No. ER00-3583-003.

[4] Section 2.06 of the APS and TEP AZ ISA - TP Agreements specifically notes that the PM is "made effective consistent with the Federal Power Act ("FPA") and FERC's regulations."

[5] APS's filing to add the PM to its OATT was accepted by the FERC by letter order issued Sept. 4, 2001 in Docket No. ER01-173-003. TEP's filing to add the PM to its OATT was accepted by the FERC by letter order issued Sept. 4, 2001 in Docket No. ER01-208-003.

<u>EXHIBIT A</u>

LAWYERS

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MEMORANDUM

TO: Pat Sanderson

FROM: Barbara S. Jost

DATE: February 10, 2004

RE: *Phelps Dodge Corp. v. Arizona Electric Power Cooperative, Inc.*, No. 1 CA-CV 01-0068, 2004 WL 117253 (Ariz. Ct. App. Jan. 27, 2004).

On January 27, 2004, the Arizona Court of Appeals ("Court"), on appeal from a prior order of the Arizona Superior Court,[1] found that certain portions of the Arizona Corporation Commission's ("ACC's") Electric Competition Rules were invalid because the ACC lacked constitutional or legislative authority to promulgate such rules. *Phelps Dodge Corp. v. Arizona Electric Power Cooperative, Inc.*, No. 1 CA-CV 01-0068, 2004 WL 117253 (Ariz. Ct. App. Jan. 27, 2004). The ACC regulations found invalid by the Court included Subsections (C)-(J) of R14-2-1609, Transmission and Distribution Access. These rules directed utilities subject to the ACC's jurisdiction to form an independent scheduling administrator with specified characteristics and to seek approval from the Federal Energy Regulatory Commission ("FERC" or "Commission") for the operations of such an entity (hereinafter "ACC Rules").

In accordance with your request, this memorandum addresses whether this Court's finding that these rules are invalid has any impact upon the status of the Arizona Independent Scheduling Administrator Association ("Az ISA") as a FERC-regulated entity under the Federal Power Act. As discussed below, we conclude that the Court's invalidation of such rules has no direct impact upon the Az ISA's status at the Commission. At the time the FERC approved the Az ISA tariff, it was aware of the fact that there was ongoing litigation concerning the validity of these rules. The FERC found that the Az ISA had an independent right to seek FERC approval of its tariff regardless of the continued validity of the ACC Rules.

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[1] *Tucson Electric Power Company v. Arizona Corporation Commission*, Nos. CV97-03748 (Consolidated) (Ariz. Sup. Ct. Nov. 27, 2000) (hereinafter "Superior Court decision").

On September 1, 2000, in Docket No. ER00-3583-000, the Az ISA filed its proposed tariff with the FERC. Shortly thereafter, the Arizona Districts[2] filed a motion to reject, which among other things, argued that this tariff filing should be rejected because the Arizona courts have determined that the ACC Rules were invalid.[3] In support, Arizona Districts appended to their pleading the Superior Court decision. In its November 30, 2000 order generally approving the Az ISA tariff filing, the FERC denied the Arizona Districts' motion and found that "[the Az ISA] has an independent right to seek Commission approval of its proposed tariff under the Federal Power Act, even without the challenged Arizona Commission rules."[4]

The Arizona Districts sought rehearing of this finding, arguing that the Superior Court decision should preclude the Commission from approving the Az ISA tariff and that the FERC's finding that the Az ISA has an "independent right" to seek approval of its filing under the Federal Power Act "also appears to be flawed." Further, Arizona Districts contended that the ACC Rules "are clearly integral to the formation and operation of the Az ISA and that the vacating of these rules by the Superior Court "has a direct impact on the AZ ISA and cannot be separated from the issue of the AZ ISA's continued existence."[5] In its order on rehearing, the FERC denied rehearing on this point, relying again on the principle that the Az ISA has an independent right to seek Commission approval of its tariff regardless of the outcome of the Arizona litigation and regardless of the continued validity of the ACC Rules.[6]

The Arizona Districts did not file a petition for review of this order.[7] Accordingly, in accordance with Section 313(a) of the Federal Power Act, these orders and the findings contained therein are now final. As a result, there is clear FERC precedent that the Az ISA tariff is not dependent on the validity of the ACC Rules. If someone were to ask the FERC to revoke the Az ISA tariff because of the Court decision, it is likely FERC would determine that further litigation on this issue is barred by the principle of *res judicata,* which prevents the relitigation of an issue that was previously litigated.[8] Accordingly, we conclude that the Court's finding that the ACC Rules are invalid has no direct impact on the AZ ISA's status before the FERC.

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[2] Twelve electric and irrigation districts which engage in wholesale electric operations and serve loads in Arizona.

[3] *Arizona Independent Scheduling Administrator Association,* Docket No. ER00-3583-000, "Joint Motion of the Arizona Districts To Intervene, Protest and Motion To Reject The AISAA Filing," filed Sep. 22, 2000.

[4] *Arizona Independent Scheduling Administrator Association,* 93 FERC ¶ 61,231 at 61,760 (2000).

[5] *Arizona Independent Scheduling Administrator Association,* Docket Nos. ER00-3583-001, *et al.*, "Request For Rehearing and Clarification of the Arizona Districts," filed Dec. 29, 2000.

[6] *Arizona Independent Scheduling Administrator Association,* 94 FERC ¶ 61,302 at 62,118 (2001).

[7] Several other parties petitioned for review of the FERC orders which petitions were subsequently withdrawn.

[8] *See Kings River Conservation District,* 32 FERC ¶ 61,021 (1985).